

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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RAY A. GOTT,

Petitioner,

vs.

JOHN COLEMAN, Warden,

Respondent.  
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CASE NO. 3:15 CV 1148

OPINION AND ORDER  
[Resolving Doc. [1](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Ray A. Gott petitions for habeas corpus relief under [28 U.S.C. § 2254](#) from his 11-year sentence.<sup>1</sup> He alleges two grounds for relief.<sup>2</sup> Magistrate Judge Kenneth S. McHargh filed a Report and Recommendation (“R&R”) in this case.<sup>3</sup> He recommends that the petition be denied.<sup>4</sup> Petitioner objects to the R&R on all grounds.<sup>5</sup> For the following reasons, the Court **OVERRULES** Petitioner’s objections to the R&R, **ADOPTS** the R&R, and **DENIES** Petitioner’s § 2254 petition.

**I. Background**

Petitioner Gott argues that the state trial court erred by excluding expert testimony and character evidence of the victim, both of which were central to his self-defense argument.

In March 2011, Petitioner Gott was convicted of voluntary manslaughter with a firearm specification in Lucas County, Ohio, Case No. L-11-1070.<sup>6</sup> The trial court sentenced him to an 11-year imprisonment.<sup>7</sup>

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<sup>1</sup> Doc. [1](#). Respondent filed a return of writ. Doc. [9](#). Petitioner Gott filed a traverse. Doc. [14](#).

<sup>2</sup> Doc. [1](#).

<sup>3</sup> Doc. [15](#).

<sup>4</sup> *Id.*

<sup>5</sup> Doc. [18](#) at 1.

<sup>6</sup> Doc. [9-1](#), Ex. 16.

<sup>7</sup> *Id.*

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Petitioner Gott appealed the trial court's ruling.<sup>8</sup> He argued that the trial court erred by 1) improperly excluding expert testimony central to his self-defense argument, 2) improperly excluding and/or limiting impeachment evidence, and 3) issuing a decision against the manifest weight of the evidence.<sup>9</sup> In 2013, the Ohio Sixth District Court of Appeals affirmed the trial court's decision.<sup>10</sup>

Although Petitioner Gott failed to file a timely appeal to the Ohio Supreme Court, the court granted his motion for leave to file a delayed appeal.<sup>11</sup> With that appeal, Gott argued that the trial court erred by 1) improperly excluding expert testimony central to his self-defense argument, and 2) improperly excluding and/or limiting impeachment evidence.<sup>12</sup> In May 2014, the Supreme Court of Ohio declined to accept jurisdiction of the appeal.<sup>13</sup>

On June 8, 2016, Petitioner Gott filed a petition for a writ of habeas corpus under [28 U.S.C. § 2254](#) in this Court.<sup>14</sup> Gott argues that the trial court erred by 1) improperly excluding expert testimony central to his self-defense argument, and 2) improperly excluding and/or limiting evidence of the victim's character.

On July 21, 2016, Magistrate Judge McHargh issued an R&R recommending that the petition be denied.<sup>15</sup> The R&R finds that on ground one, Gott failed to establish that the state court's evidentiary decision was contrary to clearly established federal law.<sup>16</sup> On ground two, the

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<sup>8</sup> Doc. [9-1](#), Ex. 17, 18.

<sup>9</sup> *Id.*, Ex. 19.

<sup>10</sup> *Id.*, Ex. 20.

<sup>11</sup> *Id.*, Ex. 28.

<sup>12</sup> *Id.*, Ex. 29.

<sup>13</sup> *Id.*, Ex. 31.

<sup>14</sup> Doc. [1](#).

<sup>15</sup> Doc. [15](#).

<sup>16</sup> *Id.* at 14.

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R&R finds that Gott's claim is procedurally defaulted because he failed to present his claim as a federal-law violation in the state courts.<sup>17</sup>

Petitioner objects to the R&R.<sup>18</sup> He argues that his first ground for relief should succeed because the state court's decision was contrary to clearly established federal law, namely the Supreme Court's *Daubert v. Merrell Dow Pharm., Inc.*<sup>19</sup> decision. He further argues that his second ground for relief was properly presented as a federal issue in state court.

## II. Legal Standard

The Federal Magistrates Act requires a district court to conduct a de novo review only of those portions of the R&R to which the parties have properly objected.<sup>20</sup> A district court may adopt without review parts of the R&R to which no party has objected.<sup>21</sup>

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")<sup>22</sup> controls habeas review of state court proceedings. AEDPA generally requires that a petitioner exhaust all of his available state court remedies before seeking habeas relief.<sup>23</sup> To satisfy the exhaustion requirement, the state courts must have "one full opportunity to resolve any constitutional issues."<sup>24</sup> A district court will not consider a habeas petitioner's "contentions of federal law . . . not resolved on the merits in the state proceeding due to [a petitioner's] failure to raise them there as required by state procedure."<sup>25</sup>

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<sup>17</sup> *Id.* at 14.

<sup>18</sup> Doc. 18.

<sup>19</sup> [509 U.S. 579 \(1993\)](#).

<sup>20</sup> [28 U.S.C. § 636\(b\)\(1\)](#).

<sup>21</sup> *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

<sup>22</sup> [28 U.S.C. § 2254](#).

<sup>23</sup> [28 U.S.C. § 2254\(b\)\(1\)\(A\)](#).

<sup>24</sup> *O'Sullivan v. Boerckel*, 526 U.S. 838, 838 (1999).

<sup>25</sup> *Wainwright v. Sykes*, 433 U.S. 72, 87 (1977); *see also* [Lundgren v. Mitchell](#), 440 F.3d 754, 763–64 (6th Cir. 2006).

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Nor will a district court consider alleged violations of state law.<sup>26</sup> However, habeas relief may be available if an alleged error of state law subjected the petitioner to a “fundamentally unfair” criminal process.<sup>27</sup> Only when a state ruling “offend[s] some principle of justice so rooted in the traditions and conscience of our people” does it constitute fundamental unfairness.<sup>28</sup> The habeas petitioner bears the burden of showing that “the principle of procedure violated by the rule (and allegedly required by due process)” is fundamental.<sup>29</sup>

### III. Discussion

#### A. Expert Testimony

Petitioner Gott argues that the trial court’s exclusion of expert testimony was contrary to clearly established federal law, specifically the Supreme Court’s *Daubert v. Merrell Dow Pharm., Inc.* decision. Petitioner’s argument fails.

A state evidentiary ruling violates due process “only where it ‘is so egregious that it results in a denial of fundamental fairness.’”<sup>30</sup> The Supreme Court has “defined the category of infractions that violate ‘fundamental fairness’ very narrowly.”<sup>31</sup>

At trial, Petitioner Gott attempted to introduce expert testimony regarding whether he had a reasonable belief of imminent harm for purposes of his self-defense argument.<sup>32</sup> The trial court found that the testimony “lack[ed] the appropriate scientific basis,” and that whether Petitioner

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<sup>26</sup> *Smith v. Morgan*, 371 F. App’x 575, 582 (6th Cir. 2010) (citing 28 U.S. § 2254(a)).

<sup>27</sup> *Williams v. Anderson*, 460 F.3d 789, 816 (6th Cir. 2006).

<sup>28</sup> *Bey v. Bagley*, 500 F.3d 514, 521 (6th Cir. 2007) (quoting *Montana v. Egelhoff*, 518 U.S. 37, 43 (1977)).

<sup>29</sup> *Bey*, 500 F.3d at 521.

<sup>30</sup> *Hudson v. Lafler*, 421 F. App’x 619, 627–28 (6th Cir. 2011) (citing *Bugh v. Mitchell*, 329 F.3d 496, 512 (6th Cir. 2003)).

<sup>31</sup> *Dowling v. United States*, 493 U.S. 342, 352 (1990).

<sup>32</sup> Doc. 9-1, Ex. 4 at 2.

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had a reasonable belief of imminent danger was “a matter for the jury to consider, as it lies within common knowledge and does not require any scientific explanation.”<sup>33</sup>

The state appellate court considered the propriety of the trial court’s decision under [Ohio Rule of Evidence 702](#). The appellate court found that expert psychological testimony is only admissible in support of self-defense arguments in very rare circumstances, none of which applied to Petitioner’s case.<sup>34</sup>

Petitioner Gott acknowledges that both the trial and appellate courts relied on Ohio law in their analyses.<sup>35</sup> He argues, however, that the trial court violated federal law because Ohio has “codified” the Supreme Court’s *Daubert* decision<sup>36</sup> and the “Federal Rules of Evidence . . . are relevant to [his] conviction in state court.”<sup>37</sup>

Petitioner Gott is mistaken. *Daubert* governs application of the Federal Rules of Evidence, which are not relevant to proceedings in Ohio state courts.<sup>38</sup> Instead, Ohio courts apply their own set of evidentiary rules. And federal habeas courts “presume that [Ohio courts] correctly interpret[] Ohio evidence law.”<sup>39</sup>

Because Petitioner Gott’s argument is based on a state-law question, he must show that the decision “contradicts Supreme Court precedent and violates a fundamental right.”<sup>40</sup> Petitioner fails to make such a showing—the “very narrow[]” category of fundamental fairness violations is not implicated here.<sup>41</sup>

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<sup>33</sup> *Id.* at 3.

<sup>34</sup> Doc. [9-1](#), Ex. 21 at 8-9.

<sup>35</sup> Doc. [18](#) at 6.; *see also* Doc. [9-1](#), Ex. 4 at 1-2; Ex. 21 at 6-11.

<sup>36</sup> [509 U.S. 579 \(1993\)](#).

<sup>37</sup> Doc. [18](#) at 5-6.

<sup>38</sup> [Norris v. Schotten](#), 146 F.3d 314 (6th Cir. 1998).

<sup>39</sup> [Small v. Brigano](#), 134 F. App’x 931, 936 (6th Cir. 2005).

<sup>40</sup> [Bey v. Bagley](#), 500 F.3d 514, 521 (6th Cir. 2007).

<sup>41</sup> [Dowling v. United States](#), 493 U.S. 342, 352 (1990).

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## **B. Character Evidence**

Petitioner Gott also argues that the trial court improperly excluded and/or limited evidence of the victim's character at trial. Because Petitioner failed to exhaust this claim as a federal constitutional violation in state court, his argument fails.

Federal courts “do not have jurisdiction to consider a claim in a *habeas* petition that was not ‘fairly presented’ [as a matter of federal law] to the state courts.”<sup>42</sup> Claims are “fairly presented” if there is “(1) reliance upon federal cases employing constitutional analysis; (2) reliance upon state cases employing federal constitutional analysis; (3) phrasing [of] the claim in terms of constitutional law or in terms sufficiently particular to allege a denial of a specific constitutional right; or (4) alleg[ation of] facts well within the mainstream of constitutional law.”<sup>43</sup>

At trial, Petitioner sought to introduce evidence of the victim's propensity for violence to support his self-defense argument. On appeal, Petitioner Gott argued that the trial court allowed evidence that the victim sometimes possessed a firearm, but improperly excluded any details of those incidents.<sup>44</sup>

In his brief, Petitioner did not allege a federal constitutional violation.<sup>45</sup> Nor did the appellate court's analysis address federal constitutional issues.<sup>46</sup> Because Petitioner's second ground for relief was presented as a state evidentiary question in the state courts, this Court does not have jurisdiction to consider the claim.

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<sup>42</sup> *McMeans v. Brigano*, 228 F.3d 674, 681 (6th Cir. 2000) (quoting *Franklin v. Rose*, 811 F.2d 322, 324–25 (6th Cir.1987)).

<sup>43</sup> *Id.* (citing *Franklin*, 811 F.3d at 326).

<sup>44</sup> Doc. 9-1, Ex. 19 at 18.

<sup>45</sup> *Id.* at 15-19. Petitioner's brief does not cite any legal authority for support. A quotation from the trial court transcript mentions “405(b)” —a reference to Ohio Rule of Evidence 405(b)—which deals with admissibility of specific acts when they constitute an “essential element of a charge.”

<sup>46</sup> Doc. 9-1, Ex. 21 at 14-18.

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#### **IV. Conclusion**

For the foregoing reasons, the Court **OVERRULES** Petitioner's objections to the R&R. The Court **ADOPTS** in whole Magistrate Judge McHargh's R&R and incorporates it fully herein by reference. The Court **DENIES** Petitioner's § 2254 petition. Moreover, the Court certifies that no basis exists upon which to issue a certificate of appealability.<sup>47</sup>

IT IS SO ORDERED.

Dated: October 18, 2016

s/ *James S. Gwin*  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>47</sup> [28 U.S.C. § 2253\(c\)](#); [Fed. R. App. P. 22\(b\)](#).